IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 5892 of 1991

For Approval and Signature:

HONOURABLE MR.JUSTICE R.S.GARG

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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BHIKHABHAI D BORAD - Petitioner(s)
Versus
COLLECTOR & 5 - Respondent(s)

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Appearance :
MRS SANGITA PAHWA FOR PM THAKKAR for Petitioner(s) : 1,
RC KODEKAR AGP for Respondent(s) : 1,4 - 6.
RULE SERVED for Respondent(s) : 2 - 3.

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CORAM : HONOURABLE MR.JUSTICE R.S.GARG

Date : 21/03/2007

ORAL JUDGMENT

1. Mrs.Sangita Pahwa, learned counsel for the petitioner and Mr.R.C. Kodekar, learned Assistant Government Pleader

for the respondent Nos.1, 4, 5 and 6. None for the respondent Nos.2 and 3 though served.

2. By this petition under Article 226 of the Constitution of India, the petitioner, apprehending his dispossession under the hands of the Collector and other authorities, is before this Court with a submission that the petitioner had taken the property in dispute, on lease from the Municipality and except in accordance with law, the petitioner cannot be dispossessed either by the State Government in encroachment removal drive, or, road widening drive, or, by the Municipality without terminating the tenancy of the petitioner. The petitioner has made a statement in the writ application that the property was leased out to him. Unfortunately, in support of the said tall claim, neither resolution passed by the Municipality nor letter of allotment nor lease deed have been filed. It is not even the case of the petitioner that he applied for such documents and the Municipality did not supply the said documents. Oral statement of a fact may taken to be correct if a prima facie finding is to be recorded, but, for recording a final finding, a party would always be obliged to produce the document on which they place their reliance.

3. Unfortunately, in absence of a resolution, or, an order of allotment, a lease cannot be granted in favour of the petitioner. If a legal action is to be taken, then, it has to be taken in legal manner only and not otherwise.
4. In the present case, despite the submission of the petitioner that he has entered upon the land under lease, in absence of the document and positive proof, I am unable to hold that the petitioner entered upon the land under some valid lease agreement. I must hold that the petitioner has no right to stay on the property.
5. The petitioner is dismissed. Rule is discharged. Interim relief, if any, is vacated. No costs.

(R.S. GARG, J.)

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